



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/09762/2019

THE IMMIGRATION ACTS

**Determined at Field House without a
Hearing
On 6 July 2020**

**Decision & Reasons
Promulgated
On 7 September 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**SM
(ANONYMITY DIRECTION IN FORCE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant is an asylum seeker and therefore entitled to privacy.
2. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rule 2008 provides:
‘Decision with or without a hearing
34. (1) Subject to paragraph (2), the Upper Tribunal may make any decision without a hearing.

(2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.'

3. Permission to appeal was granted by the First-tier Tribunal and Upper Tribunal Judge Lane, prompted by the extraordinary demands on resources, particularly the difficulties in finding a place for a socially distanced hearing, following the well-publicised national emergency arising from the spread of the Corona-19 virus, and the obligation under Rule 2(2)(e) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to avoid delay "so far as compatible with proper consideration of the issues" caused directions to be sent on 20 April 2020 suggesting that the appeal was suitable for a disposal without a hearing and directing the parties to make representations in accordance with that observation.
4. The Directions were sent to the parties on 20 April 2020 and required a response no later than 21 days after that.
5. The appellant has replied with a skeleton argument used at the First-tier Tribunal and written submissions and other matters but did not express any view on determining the appeal without a hearing. The Secretary of State has not responded.
6. Clearly the time for a response has lapsed.
7. I am satisfied that notice was given and it is right to proceed without a hearing. The issues raised in the papers are clear and, apparently meritorious.
8. I see no need for a long decision here. The problems with the First-tier Tribunal's decision lie not in what the judge did but in what he failed to do.
9. The judge was not persuaded that the appellant was involved in or sympathetic towards Kurdish activism during his time in Iran. A difficulty with this finding is that there was evidence from the appellant's sister supporting that claim. That evidence does not seem to have been considered with any care or any detailed findings made and such findings as there are are undervalued by the judge's apparent error in assigning the appellant's sister to the male gender. This is a surprising mistake for an experienced judge but it seems to have been made.
10. Second, and in some ways linked to the first, there has been no proper consideration of the appellant's claim not merely to have attended pro-Kurdish separatist demonstrations in London but to have thereby faced the risk of having been "noticed" by the Iranian authorities. The judge has made no clear findings about whether any risk may arise from this.
11. As the appellant's submissions point out there are reasons to believe that the Iranian authorities are keen to know who protests about them in the United Kingdom. It is trite law that a person's sincerity is not material. What matters is how they are perceived and the judge has not dealt with

the possibility that the appellant would be in trouble even if the judge was right to find he was insincere in his support for Kurdish separatism, in the event of his return.

12. This is not to encourage the appellant to think that he has a very strong case. There are difficulties but there may be answers to those difficulties and I am quite satisfied they have not been addressed adequately or at all in the decision.
13. This is a case where the appellant has not had a proper hearing. The core of his case has not been considered and it is fair to him and right that the appeal is determined again in the First-tier Tribunal.
14. I find that the First-tier Tribunal erred in law. I set aside its decision and I direct that the appeal be heard again in the First-tier Tribunal by a different judge.

Notice of Decision

The appeal is allowed to the extent indicated above.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 6 July 2020